

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ARBIZU,

Defendant and Appellant.

2d Crim. No. B174271
(Super. Ct. No. 2002041637)
(Ventura County)

Paul Arbizu appeals a judgment imposed following the trial court's revocation of drug-treatment probation, granted pursuant to Penal Code section 1210.1, subdivision (a).¹ The Attorney General concedes the argument raised on appeal; we reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

On March 14, 2003, Arbizu pleaded guilty to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) He admitted serving a prior prison term pursuant to section 667.5, subdivision (b). The trial court suspended imposition of sentence and granted Arbizu three years' drug-treatment probation ("Proposition 36"). (§ 1210.1, subd. (a).)

¹ All statutory references are to the Penal Code unless stated otherwise.

On July 3, 2003, the probation department filed an amended notice alleging that Arbizu violated probation by failing to report to his probation officer, failing to submit to drug testing, and failing to report to drug-treatment assessment, among other things. Arbizu admitted violating the terms of probation, and the trial court concluded that the violation was "strike one" of the section 1210.1 probation. The trial court revoked and then reinstated probation.

On December 3, 2003, the probation department filed a second notice alleging that Arbizu violated probation by being arrested on two occasions for being under the influence of drugs, failing to report to his probation officer, and failing to submit to drug testing. The probation department recommended that the trial court find Arbizu in violation as a "second strike," and reinstate probation. (§ 1210.1, subd. (e)(3)(B).)

Arbizu admitted the allegations stated in the second notice of probation violation. The trial court concluded, however, that the two arrests for being under the influence constituted "strikes two and three" pursuant to drug-treatment probation. (§ 1210.1, subd. (e)(3)(C).) The trial court revoked probation and sentenced Arbizu to three years' imprisonment. This appeal followed.

DISCUSSION

Arbizu argues that the trial court erred by concluding that the two arrests charged in the second notice of violation constitute two "strikes" pursuant to section 1210.1, subdivision (e)(3)(B) and (C). He points out that his probation officer filed only one notice of violation, recommending that probation be revoked a second time and then reinstated. The Attorney General concedes, and requests a remand for further findings regarding amenability for treatment, pointing out that Arbizu has pending criminal matters and has failed at other treatment programs.

Section 1210.1, subdivision (e)(3)(B), provides that a defendant who violates a drug-related condition of probation for the second time is entitled to be returned to probation unless he poses a danger to others or is unamenable to treatment. (*In re Taylor* (2003) 105 Cal.App.4th 1394, 1397.) "A defendant who violates probation

by committing non-violent drug possession offenses is given two opportunities to reform. The commission of a third such offense, however, renders the defendant ineligible for probation." (*People v. Williams* (2003) 106 Cal.App.4th 694, 698.)

Section 1210.1, subdivision (e)(3)(B), requires "the state [to] move[] for a second time to revoke probation" if the defendant violates a drug-related condition of his probation. Here the probation department filed only two separate notices of violation.

The judgment is reversed and remanded for further findings pursuant to section 1210.1, subdivision (e)(3)(B), regarding Arbizu's dangerousness or amenability to drug-treatment.

NOT TO BE PUBLISHED.

GILBERT, J.

We concur:

YEGAN, P.J.

COFFEE, J.

Barry B. Klopfer, Judge
Superior Court County of Ventura

California Appellate Project, Jonathan B. Steiner, Executive Director,
Suzan Hier, Staff Attorney, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc J.
Nolan, Supervising Deputy Attorney General, Lawrence M. Daniels, Deputy Attorney
General, for Plaintiff and Respondent.